



# **RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION**

No. 48

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## **On the Practice of Court Application of Legislation Regulating the Specific Features of Criminal Liability for Crimes in the Sphere of Entrepreneurial and Other Economic Activities**

(as amended by Ruling of the Plenary Session No. 7 of 11 June 2020)

In accordance with Articles 8, 34 and 35 of the Constitution of the Russian Federation, unity of economic space, free movement of goods, services and financial assets, support of competition and freedom of economic activities are guaranteed. Private property is recognised and protected on a par with other forms of property. Everyone has the right to freely use one's abilities and property for entrepreneurial and other economic activities, not prohibited by law.

The effective fulfilment of objectives of the state economic policy presupposes creation and maintenance of a favourable business, entrepreneurial and investment climate in the Russian Federation, creation of conditions for doing business by stimulation of lawful entrepreneurial activity. This activity is based on the principles of legal equality and good faith of the parties, freedom of contract and competition; persons engaged in it do so independently and at their own risk.

The successful pursuit of goals by the business community largely depends on the presence of effective organisational legal mechanisms that allow to exclude the possibility of use of criminal prosecution as means of exerting pressure on business

entities and of resolution of disputes among them, to protect entrepreneurs from being held criminally liable without corresponding grounds, where they fail to perform their contractual obligations due to normal business risks. Such mechanisms include, in particular, the additional guarantees stipulated by the legislator in material and procedural law, ensuring the rights and lawful interests of entrepreneurs held criminally liable in cases on crimes in the sphere of entrepreneurial and other economic activities.

In light of the issues encountered by the courts in application of legislation regulating the specific features of criminal liability for crimes in the sphere of entrepreneurial and other economic activities, as well as in order to ensure uniform judicial practice, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation” rules to provide the following clarifications:

1. It is brought to the attention of the courts that special features of criminal procedure are stipulated for cases on crimes committed in the sphere of entrepreneurial and other economic activities. In particular, they pertain to the manner of consideration of a notification about a crime (Parts 7–9 of Article 144 of the Criminal Procedure Code of the Russian Federation (hereinafter – the CrPC RF) and initiation of a criminal case (Part 3 of Article 20, Part 3 of Article 140 of the CrPC RF), recognition of items and documents as material evidence (Article 81.1 of the CrPC RF), application of a pre-trial restriction measure in the form of pre-trial custody (Part 1.1 of Article 108 of the CrPC RF), performance of investigative actions (Part 4.1 of Article 164, Part 1 of Article 164.1 of the CrPC RF), as well as special features of exemption from criminal liability and termination of criminal prosecution (Article 76.1 of the Criminal Code of the Russian Federation (hereinafter – the CrC RF), Article 28.1 of the CrPC RF).

The requirements contained in the aforementioned norms must be strictly adhered to, both when the court exercises its powers in pre-trial proceedings in criminal cases of said category and at all the stages of their consideration by courts of the first and higher instances.

2. The courts, in considering appeals in the manner stipulated in Article 125 of the CrPC RF regarding the decrees on initiation of a criminal case against a particular person, should take into account that by virtue of Part 3 of Article 20 of the CrPC RF (except for instances indicated in that norm), criminal cases on crimes stipulated in

Parts 1–4 of Article 159, Articles 159.1–159.3, 159.5, 159.6, 160, 165, Part 1 of Article 176, Articles 177, 180, 185.1, Part 1 of Article 201 of the CrC RF are cases of private-public prosecution and are initiated solely upon application of the victim, provided that they are perpetrated by an individual entrepreneur due to engagement in entrepreneurial activities and (or) management of property owned by her/him and used for the purposes of entrepreneurial activities, or if these crimes are perpetrated by a member of the managing body of a commercial organisation due to her/his exercise of powers of managing the organisation or due to engagement of the commercial organisation in entrepreneurial or other economic activities, while criminal cases on crimes stipulated in Parts 5–7 of Article 159 of the CrC RF unconditionally pertain to cases of private-public prosecution.

Herewith, the notion “members of the managing body of a commercial organisation” includes, in particular, a member of a board of directors (supervisory board) or a member of a collective executive body of a commercial organisation (e.g. managing board of a stock company), a person performing the functions of an individual executive body (director, general director, president of a production cooperative, etc.).

3. By implication of the criminal procedure law, where Part 3 of Article 20 of the CrPC RF applies, and the victim is a commercial organisation, criminal cases on crimes stipulated in Articles 159–159.3, 159.5, 159.6, 160, 165, Part 1 of Article 176, Articles 177, 180, 185.1, Part 1 of Article 201 of the CrC RF are initiated upon application of a person who is, in accordance with the charter of the organisation, its sole head (person performing the functions of a single executive body) or the head of a collective executive body (e.g. president of the managing board of a stock company), or upon application of the person authorised by the head of the commercial organisation to represent its interests in criminal proceedings in accordance with Part 9 of Article 42 of the CrPC RF.

If the head of a commercial organisation is suspected of said crimes, the criminal case may be initiated upon application of the managing body of the organisation, competent, in accordance with its charter, to elect, appoint the head and (or) to terminate her/his powers (e.g. board of directors), or upon application of the person authorised by that body to submit such an application.

4. When considering an appeal against a decree on initiation of a criminal case against a particular person in regard of the crime indicated in Part 1.1 of Article 108 of the CrPC RF, the court should take into account that such a decision is made by an

inquiry officer, an inquiry body, the head of an inquiry unit, the head of an inquiry body, an investigator, the head of an investigative body only on the basis of sufficient data received in the manner stipulated in Article 144 of the CrPC RF.

In this regard, the court should verify, among other issues, whether the procedural actions and operative and investigative measures taken by the aforementioned bodies and their officials in the course of verifying a notification about a crime were lawful and substantiated, paying particular attention to the actions and measures related to restriction of property rights and other rights and freedoms of entrepreneurs and (or) persons who have labour relations with them (e.g. appointment of documentary checks and revisions; obtainment of samples for comparative examinations; request or seizure of documents and items belonging to an individual entrepreneur or commercial organization, including electronic storage devices; inspection of production facilities, buildings, constructions, land plots and transport vehicles belonging to them).

If violations of law are discovered, resulting in recognition of gathered evidence as inadmissible, the court evaluates whether there is sufficient data indicating that there are elements of a crime, disregarding the results of such actions and measures. In the absence of sufficient data, the court acknowledges the decree on initiation of a criminal case as unlawful and (or) unsubstantiated and obliges the prosecutor or the head of the investigative body to remedy the committed violation of law.

5. When verifying, upon the complaint of an interested person, whether the initiation of a criminal case on crimes stipulated in Articles 198–199.1, 199.3 and 199.4 of the CrC RF was lawful and substantiated, the judge, taking into account the fact that by general rule, stipulated in Parts 7–9 of Article 144 of the CrPC RF, a criminal case on said crimes may be initiated based on materials of a tax body or of a territorial body of the insurer, should verify whether the investigator, pursuant to the requirements of Part 7 of Article 144 of the CrPC RF, has sent, within three days, a copy of the notification about such crimes, received from an inquiry body, to the corresponding tax body or a territorial body of the insurer, attaching the corresponding documents and a pre-estimate of the presumed amount of taxes, levies and (or) insurance payments in arrears, as well as whether the investigator received a conclusion or information stipulated in Part 8 of Article 144 of the CrPC RF from the tax body. Herewith it should be taken into account that prior to receiving the conclusion or information from the tax body or the insurer's territorial body the investigator may make the decision on initiation of a criminal case only where there is other sufficient

data indicating that there are elements of a crime (Part 9 of Article 144 of the CrPC RF), which also must be verified by the court.

Data indicating that there are elements of crimes stipulated in Articles 198–199.1, 199.3, 199.4 of the CrC RF may in particular be contained in the materials forwarded to the investigative body by the prosecutor in order to resolve the issue of criminal prosecution, in an expert's conclusion and in other documents.

If after completing the verification the court finds that the decree on initiation of a criminal case on crimes stipulated in Articles 198–199.1, 199.3, 199.4 of the CrC RF was issued by the investigator in the absence of sufficient data indicating that there are elements of those crimes (e.g. if a decision of the tax body to recover the arrears has been found unlawful in administrative proceedings), such a decree of the investigator is acknowledged as unlawful and (or) unsubstantiated by the court. In this case, the court obliges the prosecutor or the head of the investigative body to remedy the violation of the law.

6. It is clarified for the courts that Part 1.1 of Article 108 of the CrPC RF unconditionally prohibits to apply the pre-trial restriction measure in the form of pre-trial custody in the absence of facts indicated in Items 1–4 of Part 1 of Article 108 of the CrPC RF in regard of a person suspected or accused of crimes stipulated in Parts 5–7 of Article 159, Articles 171, 171.1, 171.3–172.3, 173.1–174.1, 176–178, 180, 181, 183, 185–185.4 and 190–199.4 of the CrC RF, and in regard of a person suspected or accused of crimes stipulated in Parts 1–4 of Article 159, Articles 159.1–159.3, 159.5, 159.6, 160, 165 and 201 of the CrC RF – on condition that these crimes were committed by an individual entrepreneur due to engagement in entrepreneurial activities and (or) management of property owned by her/him and used for the purposes of entrepreneurial activities, or if those crimes were committed by a member of a managing body of a commercial organisation due to exercise of powers of managing the organisation or due to engagement of the commercial organisation in entrepreneurial or other activities.

In this respect, the court should verify, in respect of every motion of the investigator, inquiry officer concerning the use of a pre-trial restriction measure in the form of pre-trial custody in regard of a person suspected or accused of crimes stipulated in Parts 1–4 of Article 159, Articles 159.1–159.3, 159.5, 159.6, 160, 165 and 201 of the CrC RF, who is an individual entrepreneur or a member of a managing body of a commercial organisation, whether the decree to initiate such a motion refers to, and whether the materials attached to the decree contain concrete data confirming the

conclusion that the incriminated crime was not committed due to engagement in entrepreneurial activities and (or) management of property owned by the suspected or accused person and used by her/him for the purposes of entrepreneurial activities, or not due to exercise of her/his powers of managing said organisation, or not due to engagement of that commercial organisation in entrepreneurial or other economic activities. In the absence of the aforementioned data, such a motion is not subject to satisfaction.

The fact that the decree to initiate a motion for selection of a pre-trial restriction measure in the form of pre-trial custody and the materials attached to the decree indicate that the suspect or accused had a motive of profit, and likewise indicate the way in which he/she disposed of the stolen property (e.g. personally appropriated it or used for the purposes of entrepreneurship) cannot serve as grounds on which the act is recognised as perpetrated without connection to engagement in entrepreneurial activities.

If, when the court resolves the issue of pre-trial custody in regard of a person apprehended in the manner stipulated in Article 91 of the CrPC RF on suspicion of commission of a crime in the sphere of entrepreneurial or other economic activity, the defence motions for postponement of the court session in order to present documents confirming the status of the suspect who is an individual entrepreneur or a member of the managing body of a commercial organisation, the court satisfies such a motion on the grounds and in the manner stipulated in Item 3 of Part 7 of Article 108 of the CrPC RF.

7. If the crimes listed in Part 1.1 of Article 108 of the CrPC RF were committed by an individual entrepreneur or a member of a managing body of a commercial organisation acting as an accomplice with other persons who do not have the aforementioned status, the pre-trial restriction measure in the form of pre-trial custody also may not be selected in regard of those persons in the absence of circumstances stipulated in Items 1–4 of Part 1 of Article 108 of the CrPC RF.

8. It is brought to the attention of the courts that in considering the motion for selection of pre-trial custody as a pre-trial restriction measure in regard of a person suspected or accused of crimes listed in Part 1.1 of Article 108 of the CrPC RF, they should in all cases discuss whether it is possible to apply a different, milder pre-trial restriction measure, in particular when there are circumstances indicated in Items 1–4 of Part 1 of Article 108 of the CrPC RF in a criminal case on a minor crime.

8.1. In all cases on crimes listed in Part 1.1 of Article 108 of the CrPC RF, the possibility of applying a pre-trial restriction measure in the form of bail should be discussed. Herewith, the court is not limited in its right to suggest this issue for discussion of the parties upon its own initiative.

If after discussing the possibility of applying bail to a suspect or accused the court finds it necessary to select a harsher pre-trial restriction measure or to prolong it, in its decision it must cite the motives for which it deems impossible to apply bail. Herewith, it is inadmissible to refer to other restrictions pertaining to the use of bail except for those stipulated in Parts 3 and 4 of Article 106 of the CrPC RF (e.g. restrictions regarding the calculation of the sum of the bail depending on the amount of damages allegedly caused by the suspect or accused).

9. By implication of Part 5 of Article 159 of the CrC RF, deliberate non-performance of contractual obligations in the sphere of entrepreneurial activities should be understood as intentional failure to fulfil, in full or in part, the obligations undertaken by a person who is a party to a contract for the purpose of theft of another's property or acquisition of right to such property through deceit or abuse of trust, where the parties to a contract are individual entrepreneurs and (or) commercial organisations. The evidence in the case must clearly indicate that the person had direct intent to commit fraud.

Facts confirming the intentional nature of the act may include, in particular, the facts indicating that the person actually did not have and could not have any real ability to perform the obligation; concealment of information about debts and pledges of property; disposal of monetary funds, received from a party to the contract, for personal purposes; use of fictitious incorporation documents, forged letters of guarantee, etc. during conclusion of the contract. Herewith, each of the aforementioned facts cannot by itself be regarded as evidence that the person had intent to commit a crime, and the court's conclusions regarding the guilt of the person must be based on the assessment of the whole body of evidence.

9.1. When considering cases on crimes in the sphere of entrepreneurial and other economic activities committed by a group of persons, taking into account that such acts are intentional, the court should ascertain all the facts indicating the subjective attitude of each of the defendants to the act.

Proceeding from the provisions of Part 2 of Article 35 of the CrC RF, in order for such crimes to be legally assessed as committed by a group of persons by prior

conspiracy, the following must be established in the court session: the fact that each of the accomplices had intent to commit the crime as a group of persons; the fact that there was prior agreement among them regarding the joint actions (failure to act) that form the objective element of the crime; direct participation of each of them in performing all or part of those actions.

Herewith, special attention should be paid to verifying whether the crimes were correctly qualified in cases of this category when along with an individual entrepreneur or a member of the managing body of a commercial organisation a person without that status is held liable, e.g. an assistant to the head of the organisation, a specialist, a different employee. The labour or personal relations formed between such a person and the individual entrepreneur or member of the managing body of a commercial organisation within the framework of engagement of the entrepreneur or organisation in economic activities cannot by themselves be regarded as evidence that they committed a crime as a group of persons by prior conspiracy. The fact that the employee carried out the instructions of the head pertaining to engagement in criminal activities cannot form the sole grounds for holding the employee liable for co-perpetrating the crime.

If the perpetrator of the crime is a person meeting the criteria of the special subject (e.g. stipulated in Parts 5–7 of Article 159, Articles 159.1, 160, 176, 178, 195–199.4, 201 of the CrC RF), said act may only be recognised as perpetrated by a group of persons by prior conspiracy if two and more such subjects participated in perpetration of the act. Other employees of the organisation cannot be recognised as co-perpetrators of said crimes.

10. When considering motions of preliminary investigation bodies and appeals against the actions (failure to act) and decisions of those bodies in pre-trial proceedings, the courts should note that Article 81.1 of the CrPC RF stipulates special manner and special time limits for recognising items and documents as material evidence, for returning them to the persons from whom they were seized, and that Part 4.1 of Article 164 and Part 1 of Article 164.1 of the CrPC RF stipulate limitations during performance of investigative actions and seizure of electronic storage devices.

Taking into account the provisions of Part 1.1 of Article 108 of the CrPC RF, said special manner, terms and limitations apply in criminal cases on crimes stipulated in Parts 1–4 of Article 159, Articles 159.1–159.3, 159.5, 159.6, 160 and 165 of the CrC RF, if these crimes were committed by an individual entrepreneur due to

engagement in entrepreneurial activities and (or) management of property owned by her/him and used for the purposes of entrepreneurial activities, or by a member of a managing body of a commercial organisation due to exercise of powers of managing the organisation or during engagement of the commercial organisation in entrepreneurial activities; they also apply in all criminal cases on crimes stipulated in Parts 5–7 of Article 159, Articles 171, 171.1, 171.3–172.2, 173.1–174.1, 176–178, 180, 181, 183, 185–185.4 and 190–199.4 of the CrC RF.

If an investigator, inquiry officer refuses to return the documents and items seized during pre-trial proceedings, but not recognised as material evidence, including electronic storage devices (except for items indicated in Item 2 of Part 3 of Article 81 of the CrPC RF), to the persons from whom they were seized within the term stipulated in Part 4 of Article 81.1 of the CrPC RF, this refusal may be challenged both before the head of the investigative body or a prosecutor, and likewise before a court in the manner stipulated in Article 125 of the CrPC RF.

11. When exempting persons from criminal liability on the grounds stipulated in Article 76.1 of the CrC RF, the courts need to take into account the notes to the corresponding articles of the Criminal Code of the Russian Federation. In view of this, the courts should take into account the fact that a person is regarded as a first-time offender if he/she has no outstanding or unexpunged conviction for the crimes specified in the same Article under which that person is being exempted from liability.

12. Based on the interrelated provisions of Part 1 of Article 76.1, Item 3 of Notes to Article 198, Item 2 of Notes to Article 199, Item 2 of Notes to Article 199.1, Item 2 of Notes to Article 199.3, Item 2 of Notes to Article 199.4 of the CrC RF and Parts 1, 2 of Article 28.1 of the CrPC RF, restitution of damages caused to the budgetary system of the Russian Federation as a result of a crime specified in Articles 198–199.1, 199.3, 199.4 of the CrC RF should be understood as full payment (prior to the appointment of a court session by a court of first instance) of arrears, fees and fines in the amount established in accordance with the legislation of the Russian Federation on taxes and levies and (or) legislation of the Russian Federation on compulsory social insurance against occupational injuries and diseases with due regard to the calculation of fees and fines provided by the tax body or territorial body of the insurer.

Pursuant to Item “j” of Part 1 of Article 61 of the CrC RF, full restitution of damages performed after the appointment of the court session by the court of first instance is

deemed by the court as a circumstance mitigating the punishment. Pursuant to Part 2 of the same Article, partial restitution of damages caused by the crime may also be deemed as such a circumstance.

Proceeding from provisions of Item 1 of Article 45 of the Tax Code of the Russian Federation, stating that the taxpayer's duty to pay the tax may also be carried out by a different person, for the purposes of Part 1 of Article 76.1 of the CrC RF, full restitution of damages caused to the budgetary system of the Russian Federation may be confirmed by documents certifying the fact of transfer of amounts accrued in discharge of indebtedness of the tax payer (an organization or individual) to the budgetary system of the Russian Federation (e.g. by a payment order or a receipt marked by the bank as executed). The court's ability to verify said fact is preserved.

13. Restitution of damages and (or) monetary restitution stipulated in Article 76.1 of the CrC RF may be performed not only by the person that committed the crime, but also by other persons (with consent of the former). In case of crimes stipulated in Articles 199 and 199.1 of the CrC RF, the organization on whose behalf the person is charged with evasion of taxes, levies, insurance payments or failure to perform the duties of a tax agent may also retribute damages (Note 2 to Article 199, Note 2 to Article 199.1 of the CrC RF).

Promises, as well as various obligations of a person who committed the crime, to retribute damages and transfer monetary restitution to the budget in the future are not facts that constitute grounds for exempting that person from criminal liability.

14. For a person to be exempted from criminal liability for the crimes indicated in Part 2 of Article 76.1 of the CrC RF, the restitution of damages caused to a citizen, organisation or the state as a result of the crime, as well as the transfer of income and monetary restitutions to the budget must be performed in full.

Taking into account that Part 3 of Article 28.1 of the CrPC RF does not contain a requirement for the damages to be restituted before a court session is appointed, criminal prosecution is subject to termination by the court where Part 2 of Article 76.1 of the CrC RF applies, provided that all the conditions stipulated in that norm (damages have been restituted, monetary transfers to the federal budget have been performed) are met in full before the court retires to the deliberation room.

15. The amount of damages subject to restitution is established on the basis of civil contracts, primary accounting documents, extracts (certificates) from settlement

accounts, information on transactions with the use of electronic payment means, etc. Where necessary, an expert examination may be appointed to establish the amount of damages subject to restitution.

For the purposes of monetary restitution, income is understood as the total sum of illicit enrichment acquired as a result of the crime (without deduction of incurred expenses), in monetary (cash money, cashless and electronic monetary funds in rubles and (or) foreign currency) and (or) natural form (movable and real property, property rights, certified and paperless securities, etc.).

16. Where a person that committed the crime fails to perform all the actions stipulated in Article 76.1 of the CrC RF or fails to perform them in full volume, her/his motion for termination of criminal prosecution on the grounds stipulated in Articles 75, 76 or 76.2 of the CrC RF may be satisfied by the court, provided that the requirements stipulated in said norms are fulfilled.

17. If in the presence of grounds stipulated in Article 76.1 of the CrC RF a court of first instance does not terminate the criminal case and (or) criminal prosecution, then in accordance with Article 389.21 of the CrPC RF the court of appeal quashes the judgement of conviction and terminates the criminal case and (or) the criminal prosecution.

Where there are other legal grounds to quash the judgement of conviction, and therewith, at the time of consideration of the case by the court of appeal, the convicted person has met the conditions specified in Part 2 of Article 76.1 of the CrC RF regarding exemption from criminal liability, the criminal case or criminal prosecution is subject to termination according to the rules of Part 3 of Article 28.1 of the CrPC RF, unless there are grounds to pronounce a judgement of acquittal.

The decision to terminate the criminal case and (or) criminal prosecution on the grounds specified in Article 76.1 of the CrC RF may only be adopted by the court of first instance or court of appeal if the accused (convicted) person does not object to that. By implication of the law, if the accused (convicted) person does have such objections, the court continues to consider the case and delivers a judgement of acquittal or a judgement of conviction with relief of the convicted person from punishment (Part 2 of Article 27, Part 8 of Article 302 of the CrPC RF).

18. In cases on crimes indicated in Part 2 of Article 76.1 of the CrC RF, where they were committed by a group of persons bearing joint and several liability for the

damages incurred by joint criminal actions, the court terminates criminal prosecution in regard of all the accomplices on condition that all the requirements of Part 2 of Article 76.1 of the CrC RF regarding the restitution of damages and other payments have been met in full by at least one of those persons.

18.1. A difference should be drawn between criminal violation of the manner of engagement in economic activities and harming the legally protected interests due to circumstances excluding the criminal nature of an act.

Where an act containing the elements of a crime in the sphere of entrepreneurial and other economic activities was perpetrated by a person for the purpose of eliminating or preventing danger that directly threatened a person, the legally protected interests of the society or the state, and this danger could not be eliminated by other means, such an act cannot be recognised as criminal, unless the limits of extreme necessity were exceeded (Article 39 of the CrC RF). For example, temporary engagement in entrepreneurial activities without a license (without prolonging a license within the stipulated time) does not entail criminal liability, where termination of such activities can result in disorganisation of functioning of critical infrastructure objects (breakdown of water intake, water treatment, provision of heat for housing and social infrastructure objects of a locality, threat of an industrial disaster, etc.).

In order for a person's actions to be recognised as taken under extreme necessity (as not criminal), the presence and actual nature of the arising danger should be established, as well as the fact that it was impossible to eliminate it without harming the interests of the person, society or state, and also that the limits admissible thereby were not clearly exceeded, in particular that damage equal or greater to that which could ensue in case of further development of the arising danger was not incurred.

18.2. The courts should take into account that the provisions of Article 41 of the CrC RF also apply to persons who take substantiated risks in the course of entrepreneurial and other economic activities in order to fulfil a publicly useful goal, provided that the risk corresponds to the criteria laid down in the law. Among those is a situation in which it is impossible to reach a publicly useful goal by acting (failing to act) without risk, and the fact that the person tolerating the risk took sufficient measures to prevent harm to the interests protected by criminal law.

If during engagement in entrepreneurial and other economic activities aimed at a publicly useful goal a person knowingly perpetrates actions (fails to act) that are attended by a threat to the lives of many people, a threat of an environmental

catastrophe or a public disaster, then, pursuant to Part 3 of Article 41 of the CrC RF, the tolerated risk cannot be regarded as substantiated.

18.3. When providing legal assessment of actions pertaining to violation of the manner of engagement in entrepreneurial and other economic activities, the courts need to take into consideration the provisions of Part 2 of Article 14 of the CrC RF, stating that an action (failure to act) which formally contains the elements of an act stipulated in criminal law, but does not present public danger due to its petty nature, is not a crime.

19. When appointing punishment to a person found guilty of one or several crimes in the sphere of entrepreneurial and other economic activities, the courts should be guided by the general principles of appointment of punishment, should discuss whether it is possible to apply Parts 1 and 2 of Article 64, Article 73, as well as Part 6 of Article 15 and Article 80.1 of the CrC RF. It should be noted that the fact that the convicted person is held in custody until the sentence is pronounced cannot predetermine the appointment of punishment in the form of actual deprivation of liberty.

20. If, during court consideration of a criminal case on a crime committed in the sphere of entrepreneurial and other economic activities, circumstances are discovered which were conducive to the commission of the crime, violation of rights and freedoms of citizens, as well as other violations of law occurring during inquiry of preliminary investigation, the court, in a special decree or ruling, draws the attention of the corresponding organisations and officials to these circumstances and the facts of violation of law that require for necessary measures to be taken.

21. Due to adoption of this Ruling, Item 16 is excluded from Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 19 of 27 June 2013 “On Court Application of Legislation Regulating the Grounds and Manner of Exemption from Criminal Liability”.

Chief Justice of the Supreme Court of  
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V.M. Lebedev

Secretary of the Plenary Session, Judge of  
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V.V. Momotov